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No. 84-233

IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

PHILLIPS PETROLEUM COMPANY,
Petitioner
v.
IRL SHUTTS, *et al.*,
Respondents

On Writ of Certiorari to the Kansas Supreme Court

BRIEF AMICUS CURIAE OF AMOCO PRODUCTION COMPANY IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. May a state court in a nationwide class action, consistent with the Full Faith and Credit and Due Process Clauses, apply its own law to transactions occurring between non-residents in other States to which the forum has no connection?

2. May a state court in a nationwide class action, consistent with the Due Process Clause and cooperative federalism, assert jurisdiction over unnamed class members whose transactions arose entirely in other States and who are non-residents, neither having contacts with the forum nor having affirmatively consented to the forum's jurisdiction?

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INTEREST OF AMICUS CURIAE

Amoco Production Company (Amoco) is a defendant in a nationwide class action suit brought by a single natural gas royalty owner in a state court of Kansas. Like the instant litigation (*Shutts II*), the class action against Amoco involves natural gas properties in ten States, albeit significantly more of the transactions (around 33% of the leases, but less than 20% of the money) have a Kansas connection. Like petitioner Phillips Petroleum, Amoco did not forward royalty payments related to nationwide price increases until it was certain that rates under the Natural Gas Policy Act of 1978 were not subject to refund. Once the price increases were finalized, Amoco promptly forwarded the accrued (suspense) royalties.

Unlike Phillips, Amoco made no attempt to withhold interest on the suspense royalties. Amoco forwarded to its royalty owners not only the suspense royalties but also interest based on the applicable statutes of the States in which the leases are situated.

Because the Kansas Supreme Court had previously indicated a willingness to hear nationwide class action suits under somewhat similar circumstances and apply Kansas law both to the applicable rate of interest and to whether interest on interest was payable, *Shutts v. Phillips Petroleum Co.*, 222 Kan. 527, 567 P.2d 1292 (1977) *cert. denied*, 434 U.S. 1068 (1978) (*Shutts I*), the class suing Amoco alleges that additional payments, based on Kansas law, not local law, are due to members of the class. This suit, *T.A. Dudley v. Amoco Production Company*, Case No. 80 C 34 (26th Judicial District Court, Stevens County Kansas) is currently at the class notice stage. Based on *Shutts I* and the instant case, *Shutts II*, there is every reason to believe that despite the fact Amoco forwarded the applicable interest to its royalty holders and Phillips did not, the rule in *Shutts II* will be applied to the approximately $6 million in suspense royalties having no connection with Kansas (beyond the fact of the litigation).

SUMMARY OF ARGUMENT

1. The decision of the Kansas court to apply Kansas law to contractual transactions having no connection with Kansas violates both the Full Faith and Credit and Due Process Clauses of the Constitution. Kansas is entirely without a legitimate interest in applying its internal law to transactions occurring between non-residents, in other States. The laws of the other States are outcome determinative on the question involved in this case. Not only is the defendant entitled to the protection those laws afford it, in our federal system of States the Constitution requires that the affected States be allowed to make their

own choices as to what is the appropriate public policy to govern transactions occurring within their borders.

2. Kansas uses the nationwide class action as a regulatory device to police out-of-state companies doing business in-state. But in so doing the Kansas courts need out-of-state plaintiffs for credibility and can only acquire them through the promise of a choice of law rule that guarantees the Nation's most plaintiff-oriented substantive law on the merits. The class action thus violates the rights of defendants by subjecting them to higher judgments than would be available elsewhere and, more importantly, leaves the States most concerned with the transactions helpless bystanders as their public policies are ignored by Kansas. By ignoring or misapplying the laws of sister States most affected by the transactions Kansas' use of the class action regulatory device creates inherent risks of thwarting the public policies of States vitally concerned with the treatment of their major industry. To use a device that creates such risks violates the cooperative federalism implicit in the Constitution.

ARGUMENT

1. The Decision Below Violates Both the Full Faith and Credit and Due Process Clauses by Applying Kansas Law to Transactions Having No Connection Whatsoever with the Kansas Forum.[1]

This is a case about a simple legal issue. What is the appropriate rate of interest to be paid on an amount clearly owed by the defendant to the plaintiffs? It is made more complex solely because it involves a nationwide class action where the overwhelming numbers of plaintiffs have no contact whatsoever with the forum. The Kansas Supreme Court has ruled that Kansas law,

[1] Although the choice of law issue is placed second by Phillips, it will be treated first in this Brief, for the choice of law determination illuminates well the infirmities of a nationwide class action involving parties without forum contacts.

which is vastly more favorable to the plaintiffs than any other laws, sets the applicable rate of interest. The laws of other States, though clear and easily ascertainable, were rejected even for transactions occurring exclusively within their borders. Indeed, it took the Kansas Supreme Court but a single sentence to summarily toss aside the constitutions, statutes, and court decisions of Texas, Oklahoma, and Louisiana (to take just the three States most involved with the question of suspense royalties): "Compelling reasons do not exist to require this court to look to other state laws to determine the rights of the parties involved in this suit." 679 P.2d at 1181.

With the laws of the other States thus shunted aside, Kansas found that undertakings filed by Phillips with the Federal Power Commission (FPC) dealing with interest potentially payable to pipelines set the applicable Kansas rate on payments to royalty owners. Nothing in the Constitution prohibits Kansas from making this as an internal choice should it believe, as it does, that the equities of the parties and sound public policy demands it.

But nothing prohibits other States from disagreeing should they choose to strike a different balance in the producer-royalty owner relationship when the two have not agreed on how they wish to settle this problem. And not all States do agree that sound public policy demands the Kansas solution. Texas, in fact, takes an entirely different tact. In *Phillips Petroleum Co. v. Stahl Petroleum Co.*, 569 S.W.2d 480 (Tex. 1978) the Texas Supreme Court on identical facts (save not in the context of a class action) held that where a gas royalty agreement was silent on suspense royalties and the applicable rate of interest to be paid on them, the Texas statutory rate of interest filled the missing gaps. This statutory rate was decidedly below the rate of the FPC filings, and thus provided the royalty owner a less favorable result than the FPC would give an interstate pipeline or

than Kansas would give a similarly situated royalty owner. But that was no matter. Texas had a statutory rate of interest and that portion of the Texas Revised Civil Code governed. It was not that the Texas Supreme Court was unaware of the public policy of Kansas. *Stahl* was decided a year after *Shutts I* and cites the case, 569 S.W.2d at 485 n.5. *Shutts*, however, establishes public policy for the State of Kansas: that was not the public policy chosen by the court and legislature for the State of Texas.

The Oklahoma Constitution has a provision dealing with interest and there is a statute implementing it.[2] Like Texas this public policy of Oklahoma differs markedly from its Kansas counterpart. But unlike Texas, where the state supreme court has authoritatively answered this question, no Oklahoma court has been able to articulate the public policy of the State because all Oklahoma suspense royalty litigation is now carried on in Kansas.[3] Whatever may be said for the conclusions of the Kansas court on the merits of the appropriate rate of interest, Texas flatly disagrees and it would appear that other States might, too, if the Kansas courts would allow them a chance to speak.[4]

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[2] Oklahoma Constitution, Art. 14 § 2, implemented by 15 Okla. Stat. Ann. § 266.

[3] Named plaintiffs Robert Anderson and Betty Anderson are Oklahoma residents and owners of Oklahoma leases. They had commenced litigation in Oklahoma, but dropped it to join Irl Shutts, a Kansan (with leases in Oklahoma and Texas, but not Kansas), when he commenced the instant class action.

[4] E.g., Louisiana Civil Code, Art. 1938: "All debts shall bear interest at the rate of seven per centum per annum from the time they become due, unless otherwise stipulated." See *Wurzlow v. Placid Oil Co.*, 279 So.2d 749, 772-74 (La. App. 1973) (applying Art. 1938 to additional oil and gas royalties). Art. 1938 has been subsequently amended, effective July 12, 1982, to raise the interest payable to twelve percent.

What Kansas has done is to offer an open season for plaintiffs suing gas producers on out-of-state transactions so long as they find a similar transaction in Kansas. If other States were to adopt a like approach, plaintiffs' attorneys the Nation over could identify certain "magnet" forums where the substantive law most favored the plaintiff. These forums then would attract nationwide litigation by ignoring non-forum laws that would produce either a judgment or lower recovery for defendants. Such decisions from "magnet" forums would nullify the alternative public policies of other States no matter how strongly they were held.

While this sounds like a parade of horribles that simply could not happen in our federal union, the unhappy fact is that it has already happened. In Kansas, in this case.

No one disputes that *if* Phillips *agreed* how much interest to pay the royalty owners that agreement should be enforced. At times the Kansas Supreme Court decision reads as if such an agreement existed. Since *no* such agreement does exist, it is important to understand how the existence of such an agreement was implied.

The undertaking to pay interest referred to by the court below came about pursuant to regulations implementing § 4 of the Natural Gas Act. Phillips had applied for rate increases and the increases had been suspended pursuant to § 4(e). But under § 4(e) the suspension must terminate if a producer so moves after the proceedings have exceeded five months. In these circumstances the producer is required to agree to refund any portion of the rate subsequently found unreasonable and pay interest, set by regulation,[5] on the amount to be refunded. The undertaking—or "contract"—is thus between the producer and pipeline, not between producer and royalty owner. Thus the conclusion of *Shutts I* and *Shutts II*, repeated in the Respondents' Brief in Opposition to Certiorari at 13, that statutory interest rates "were not pertinent to the case since they applied only if there was no agreed interest rate" is simply inapposite. It would be correct if this were an action between Phillips and a pipeline company. But this is not. This is an action between Phillips and royalty owners. Their relationship is governed by contract, not by the Federal Power Commission. A royalty agreement might provide for an applicable rate of interest when royalties are suspended pending administrative proceedings, but if it does not, it is simply a contract where there is silence on issues relating to interest. Under these circumstances one must seek an answer in local law, not that of Washington, D.C. The local laws, as already shown, will produce radically different results. Yet Kansas ignores them. In our federal system such a result can not stand.

[5] 18 C.F.R. § 154.102(c)(2) (1983).

As the plurality in *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 308 (1981) noted, "a State which has no significant contact or significant aggregation of contacts, creating state interests with the parties and the occurrence or transaction" may not impose its rules on others. Just what are the Kansas interests? First, Kansas has a strong interest in protecting Kansas residents. Second, Kansas has a strong interest in policing transactions occurring in Kansas regardless of the residency of the parties. But these two strong interests account for less than 3% of the entire suit. The court below brought in the other 97% —despite a total lack of contacts with the forum—with two more alleged interests. The first added interest was adjudicating claims of class members having no contact with Kansas beyond this case because they had the desire to see Kansas law applied to their trans-

actions. The second was the fact that the defendant does business in Kansas.[6]

These two additional interests are simply insufficient under *Hague* to authorize displacement of the laws of the States most interested in the transactions. Texas, Oklahoma, and Louisiana are major gas-producing States with strong public policies governing the relationship of producer to royalty owner.[7] As noted, those policies on the issue of interest on suspense royalties are much more favorable to the producer than the Kansas rule. It may well be that from a Kansas perspective the policies of these States are backward and wrong-headed. But they exist nevertheless, and the Federal Constitution guarantees to each State precisely this option of determining its own internal policies (in the absence of federal legislation). It thus is not only not compelling to displace the choices of citizens of other States on matters involving their significant internal industries, it is unconstitutional.

[6] The latter point was buttressed by statements concerning a "common fund," a legal fiction used to shore-up both the jurisdictional and choice of law conclusions. Apparently the "common fund" then justifies the bootstrap that since Phillips is in Kansas, it follows naturally that the "common fund" is too. Why this fiction assists the Kansas choice of law conclusion is unclear. One would expect that if the "common fund" exists, it would be controlled not by the laws of the State of litigation but by either the laws of the State of incorporation or those of the State of principal place of business, Delaware and Oklahoma respectively.

[7] Incredible as it seems when contrasted with the result reached, the Kansas Supreme Court understands precisely this point when the affected State's name is Kansas:

> "While [the Kansas royalty owners] may constitute only a small percentage of the total number of class members, this state has a significant interest in protecting the rights of these royalty owners both as individual residents of this state and as members of this particular class of plaintiffs. Oil and gas production is a significant industry in this state. Kansas has an interest in ensuring that out-of-state oil and gas companies which do business within this state do not conduct themselves unlawfully or violate the rights of resident royalty owners to whom the company is responsible."

Shutts II, 679 P.2d at 1174.

Could it be seriously asserted that Kansas could by legislation reach the same result as the Kansas Supreme Court reached? Suppose that after debate the Kansas legislature determines that it should police the suspense royalty practices in all fifty United States jurisdictions of oil companies doing business in Kansas. Accordingly it passes a statute requiring any oil company present within Kansas to conform all transactions involving suspense royalties to Kansas law. At the outset it should be noted that the case for sustaining such a law is *greater* than in the instant case. As both *Shaffer v. Heitner*, 433 U.S. 186 (1977) and *Kulko v. California Superior Court*, 437 U.S. 84 (1978) demonstrate, pursuit of a policy specifically declared by the legislature is entitled to more weight than pursuing generalized state interests nowhere found in relevant legislation. Yet even with the added backing of legislation, it is inconceivable that Kansas could, consistent with the Commerce, Due Process, and Full Faith and Credit Clauses, impose its will on the citizens and legislatures of Texas, Oklahoma, and Louisiana. No matter how happy a resident of those States might be that Kansas was attempting to give him a more favorable law than he was afforded by the political process of his home State,[8] that would not constitute a legislatively valid interest for Kansas to act. Kansas simply lacks any interest in transactions occurring between non-residents, in other States, and affecting Kansas only by the presence of a plaintiff forum shopping for the best available law to govern his trans-

[8] "The plaintiff class members have indicated their desire to have this action determined under the laws of Kansas." *Shutts II*, 679 P.2d at 1181.

actions.[9] The Constitution contains limits on extra-territorial reach. See *Hague*; *Baldwin v. G.A.F. Seelig Inc.*, 294 U.S. 511 (1935); *Home Ins. Co. v. Dick*, 281 U.S. 397 (1930).

2. Nationwide Class Action Suits Involving Transactions Wholly Outside the Forum Violate Both the Due Process Clause and the Cooperative Federalism Implicit in the Constitution by Commandeering Out-of-State Plaintiffs to Effectuate the Regulatory Purposes of the Forum In Derogation of the Interests of Non-Forum States.

Class actions can be major regulatory devices for States. Rather than expending scarce enforcement resources to police a variety of marketplace transactions, the class action device can be substituted instead. The promise of substantial attorneys' fees in the event of victory provides the needed incentive for private parties to bring unlawful or even questionable transactions to judicial attention.

The Kansas Supreme Court is fully cognizant of this. The opinion below at a variety of points[10] explicitly adverts to regulatory justifications for the instant class action tying them in with the need to police out-of-state corporations doing business in its significant oil and gas industry.[11] Precisely what makes this regulatory use of the class action so attractive internally also creates the unconstitutional extra-territorial effects.

[9] If the class action aspect of this suit were stripped away, it is clear that a Texas resident royalty owner under a lease executed in Texas covering oil and gas rights in Texas could not enter Kansas and sue Phillips and have Kansas courts apply Kansas law. Kansas is so wedded to situs law that it remains one of the few States yet to move from the place of wrong rule in tort conflicts. R. Weintraub, Commentary of the Conflict of Laws 308 n.54 (2nd ed. 1980) citing *McDaniel v. Sinn*, 194 Kan. 625, 400 P.2d 1018 (1965).

[10] E.g., 679 P.2d at 1166, 1173, 1174.

[11] See note 7 *supra*.

Were this a class action where the plaintiffs were all Kansas residents or owners of Kansas leases this regulatory device would raise no federal questions at all. But when a local regulatory device has interstate effects, then the Federal Constitution imposes limits on its use. To understand what the limits are, one must look to how the Kansas courts have crafted class action policies to police the practices of oil and gas producers.

First, a regulatory scheme, just like a criminal statute, needs a credible threat of enforcement. One of the attractive features of class action litigation is that it can bring together numerous small claims that would otherwise be ignored into a single suit which then can reach settlement with the defendant. The key is having enough plaintiffs to get the amount in controversy high enough to attract plaintiffs' lawyers and the attention of the defendant. Yet just as individual claims might be so small that litigation would not occur but for the class action, so too, a class might be too small to justify the litigation. In fact that explains perfectly why a nationwide class action rather than a Kansas class action was selected on these facts. The Kansas interest in the suspense royalties involved in this litigation whether measured by Kansas leases or Kansas residents is *de minimis*, ¼ of 1% of the leases and $123,000 out of $11.3 million.

Like most affected States—but not Oklahoma[12]—Kansas has an opt out class action procedure. Since inertia is the guiding aspect of small class action claims, most plaintiffs will remain in the class under an opt out procedure. Because of the regulatory goals the class proceeding is supposed to accomplish, it is essential that plaintiffs remain in the class. Thus while Kansas related all who wished to opt out of the instant case, the court made it clear that its statute "gives the court power to deny exclusion to class members, be they residents or non-

[12] 12 Okla. Stat. Ann. § 13(C).

residents of Kansas, whose inclusion is essential to the fair and efficient adjudication of the controversy." 679 P.2d at 1170. That the Kansas courts are serious about prohibiting opting out by certain plaintiffs can be seen from a recent settlement order in a class action against Amoco involving "market value" leases[13] where twelve requests for exclusions ranging from eight individuals to Mobil Oil Corporation were denied by the judge without supporting reasons.[14]

Such denials make sense given the regulatory nature of the class action. Requests to opt out are inconsistent with the regulatory goals of the class action when those seeking to opt out represent too much of the potential final judgment. The credible threat can not be maintained if too many plaintiffs choose to leave the class and the resulting class has insufficient monetary claims against the defendant to provide the necessary impetus to litigate.

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[13] The substantive issue was whether, in a lease stating that royalty payments would be based on "market value," the "market value" clause should be interpreted to mean (1) the price actually received by the producer, (2) the highest federally authorized price for the Hugoton field, or (3) a price higher than the highest federal price based on sales of intrastate gas and/or comparative prices for alternative competing fuels. The Kansas Supreme Court in a prior appeal had ruled with the plaintiffs that neither price actually received nor federal regulations fixing a maximum price receivable were obstacles to the setting of an even higher rate as the "market value" for the purpose of computing royalties owed by producers. The court did note, however, that a trial court could consider evidence concerning maximum federal price regulations in setting the "market price." *Matzen v. Cities Service Oil Co.*, 233 Kan. 846, 667 P.2d 337 (1983).

[14] This case action is also styled *T.A. Dudley v. Amoco Production Company*; its number is 5188; and it is also in the Twenty-Sixth Judicial District, Stevens County. The portion of the opinion as well as the list of plaintiffs denied the right to opt out may be found in the Appendix to this Brief.

Even the promise of a large enough class of plaintiffs to provide the credible threat to the defendants is insufficient if plaintiffs determine that the class action should be prosecuted elsewhere. Experienced plaintiffs' counsel will litigate where the laws of the forum offer the most promising chances of recovery. As the choice of law point has already demonstrated, Kansas meets this criterion perfectly. It promises—and delivers—the best available substantive law for the plaintiffs. And suddenly the decision of a State that still applies the law of the place of wrong in tort conflict actions to apply forum law in natural gas lease cases makes perfect sense.[15] The former are private law cases, while the latter are important regulatory cases needing a special choice of law rule to effectuate their broad purposes.

As beneficial as this regulatory use of the class action may be for Kansas, it imposes unconstitutional costs on both defendants and other affected jurisdictions. The costs to defendants are easiest to state. Recoveries will be higher in Kansas than anywhere else and the defendant even subsidizes the plaintiffs' counsel in accomplishing the feat. Furthermore pre-transaction planning as well as post-transaction settlement is made more difficult by the Kansas determination that only its laws are relevant to out-of-state transactions.[16]

The defendants are simply caught in the middle of the regulatory device. As *Shutts I* and *Shutts II* make clear, the producers were obligated under Kansas law to forward substantial sums of interest to Kansas residents. And they should have done so earlier. But to effectuate this public policy of Kansas, the defendants are also be-

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[15] See note 9 *supra*.

[16] Still, if one assumes *arguendo* that the choice of law determination is not independently unconstitutional, at least the gas industry henceforth can plan transactions with full knowledge of the application of Kansas law.

ing forced to grant recoveries for transactions in other States significantly higher than those States would authorize. The winners in this are the plaintiffs' attorneys who will probably take one-third of the entire judgment [17] and the State of Kansas which serves notice on out-of-state producers what their duties are. The producers are obviously losers, but so too are the affected States which have watched their laws and policies shunted aside because of the internal needs of Kansas. This is not the federalism the Framers envisaged.

The other States are helpless bystanders to the usurpation of their rights to regulate their internal transactions. Plaintiffs offered more than they are entitled to cannot be expected to protect their home State's jurisdiction to regulate; even if they tried, Kansas might well deny their right to opt out. Thus, an affected State like Texas, Oklahoma, or Louisiana has no way to protect its interests; its problems automatically flow north to Kansas for solution.

While one might think added interest on suspense royalties is hardly a major internal problem, the fact is that the oil and gas law of Kansas is different from that of the States most affected by the problem. Kansas may need Texas and Oklahoma plaintiffs in order to effectuate *its* public policies, but for Texas and Oklahoma the relationship of producer to royalty owner is far more important than for Kansas because the oil and gas industry plays such an important part in the States' economies.

Indeed the importance of oil and gas to the major producing States explains why a class action even con-

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[17] No award of attorneys' fees was before the Kansas court. At the end of its opinion it discusses attorneys' fees in traditional general terms leaving implementation to the discretion of the trial court. *Shutts II*, 679 P.2d at 1181-83. In the *Dudley* Settlement Order, note 14 *supra*, attorneys' fees were awarded at one-third of the amount of settlement.

strained by valid choice of law rules still unconstitutionally interferes with the domestic policies of the affected States. Even if Kansas applied the relevant local laws the class action would be improper because of the excessive risks of misinterpretation of the public policies of the affected States. There is ample evidence on this record that bringing multi-state plaintiffs in for a class action will result in the slighting or misinterpretation of the relevant law. At one point the Kansas Supreme Court rather proudly notes that if it did not decide the case, then plaintiffs would be left without a remedy because their States' statutes of limitations had run. 679 P.2d at 1169. Nothing was cited for this incredible proposition and that is hardly surprising since it is flatly wrong. The relevant tolling statutes would have preserved the plaintiffs' claims had the Kansas Supreme Court dismissed those plaintiffs without forum contacts.[18]

If Kansas can overlook an elementary point such as the existence of tolling statutes, then any aspect of non-forum law is subject to error. What is needed is a prophylactic rule, based on cooperative federalism and due process, that prohibits this type of nationwide class action. Only through such a rule can the regulatory interests of all States be protected from the inadvertent error that is inherent in any determination to hear a class action implicating the laws of numerous States. In *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943) this Court ruled that the interest of Texas in controlling its oil and gas leases was sufficient to require abstention and dismissal of a diversity case where the sole risk was misinterpretation of Texas law. That same risk of misinterpretation is inherent in the device selected by Kansas to police out-of-state producers doing business within its borders and a similar result is justified on these facts.

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[18] Vernon's Texas Rev. Civil Stats., Art. 5529; 12 Okla. Stat. Ann. § 100; Louisiana Civil Code, Art. 3518.

Furthermore, this is not a situation like diversity or a normal transient cause of action case where a court is, of necessity, forced to look to the laws of another jurisdiction and do its best with them. The Kansas courts are not passive participants in federalism in this case; they have actively encouraged multi-state litigation without consulting non-forum plaintiffs. Under these circumstances the costs of misapplication of the relevant State laws are simply too high. They are no part of the fact of a federal system. Instead they are an unconstitutional outcropping of a simple error: a single State forgetting that it is but one of fifty.

CONCLUSION

Two years ago this Court heard oral argument in *Gillette Co. v. Miner, cert. dismissed,* 459 U.S. 66 (1982), on the issue of nationwide class actions. In that case the Illinois Supreme Court had determined that the issue of class manageability would be decided by the number of sub-classes based on the varieties of local laws. 87 Ill.2d 7, 428 N.E.2d 478, 484 (1981). Here, by contrast, the Kansas Supreme Court has solved the manageability problem by the amazing determination that Kansas law governed all transactions in the United States even though 97% of them lie beyond its borders and involve persons whose only contact with Kansas is receipt of notice of the suit. To allow a state court to determine the property and contract rules that will govern transactions in other States on the sole basis that a foreign corporation can be found within its borders turns choice of law into an unconstitutional joke. Obviously if Kansas can do this on these facts then any other willing State can do the same in a different area. This aggressive parochialism shows no respect for the sovereign determinations of sister States; it poses a "substantial threat to our system of cooperative federalism." *Nevada v. Hall,* 440 U.S. 410, 424

n.24 (1979). Accordingly the judgment below should be reversed.

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